

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

MARK COEN,

Petitioner,

v.

CITY OF MERCER ISLAND,

Respondent.

Case No. 18-3-0010

FINAL DECISION AND ORDER

SYNOPSIS

Mark Coen (Petitioner) challenged the City of Mercer Island (City) Ordinance No. 18C-08, a revision of the City's land use approval procedures, which included a provision codifying the city's intent to adopt development regulations consistent with certain amendments to the comprehensive plan "as soon as reasonably practicable following the adoption of the amendments." MICC 19.15.230(I). Petitioner argued the Growth Management Act (GMA) requires adoption of consistent implementing development regulations concurrent with adoption of comprehensive plan amendments. The Board concluded that Petitioner failed to carry his burden to prove that the procedural ordinance was noncompliant even though following the process there adopted might result in a failure to comply in some circumstances.

I. INTRODUCTION

The City made major procedural changes to its land use practices through the adoption of Ordinance 18C-08, September 17, 2018, revising Mercer Island City Code Chapter 19, Unified Land Development Code. The ordinance includes a section, codified at MICC 19.15.230(I), which provides:

1 *Implementation of Comprehensive Plan Amendments.* It is the city's **intent** to
2 comply with the Growth Management Act (Chapter 36.70A RCW) **and the**
3 **guidelines for implementation of comprehensive plan goals and policies**
4 **contained in Chapter 365-196 WAC.** It is also the city's intent to allow
5 **sufficient time** for review of regulations or programs that are intended to
6 implement new or significantly amended policy direction within the
7 comprehensive plan.

8 1. Where amendments to existing comprehensive plan goals and policies
9 represent an adjustment to an existing policy direction, the city should
10 generally prepare, review, and adopt implementing development regulations or
11 programs **concurrently** with the adoption of the amendments to the
12 comprehensive plan.

13 2. Where amendments to existing comprehensive plan goals and policies
14 represent a new policy direction, or a significant amendment to the current
15 policy direction within the comprehensive plan, the city should prepare, review,
16 and adopt implementing development regulations or programs **as soon as**
17 **reasonably practicable following the adoption of the amendments** to the
18 comprehensive plan. [Emphasis added.]

19 Petitioner challenges the City's compliance with the GMA's goals and requirements in
20 adopting the language in subsection 2, highlighted above. In Issue 1, Petitioner argues that
21 the GMA requires adoption of consistent implementing development regulations concurrent
22 with adoption of comprehensive plan amendments and, therefore, adoption of this policy is
23 in violation of RCW 36.70A.130. In Issue 2, Petitioner alleges that the timing of its insertion
24 into the ordinance violates requirements of public participation of RCW 36.70A.020(11).
25

26 Procedural history of the case is detailed in Appendix A. All legal issues as
27 established in the Prehearing Order are set out in Appendix B.
28

29 II. BOARD JURISDICTION

30 The Board finds the Petition for Review was timely filed¹ and that Petitioner has
31

32 ¹ RCW 36.70A.290(2).

standing to appear before the Board.² The Board also finds it has jurisdiction to review the issues stated in the complaint for compliance with the Growth Management Act (GMA).

III. STANDARD OF REVIEW

Comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.³ This presumption creates a high threshold for challengers as the burden is on the petitioner to demonstrate that any action taken by the City fails to comply with the GMA.⁴ The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.⁵

The scope of the Board's review is limited to determining whether a City has achieved compliance with the GMA only with respect to those issues presented in a timely petition for review.⁶ The Board is directed to find compliance unless it determines that the challenged action is clearly erroneous in view of the entire record before the Board and in light of the goals and requirements of the GMA.⁷

IV. APPLICABLE LAW

The Growth Management Act RCW Title 36.70A and its implementing regulations contain multiple references to the need for both concurrency and consistency among and between the jurisdiction's comprehensive plan and its development regulations. The words are complementary but not necessarily interchangeable. Concurrency generally refers to timely provision of necessary public infrastructure to support development, as reflected in RCW 36.70A.020(12) (goal statement) and RCW 36.70A.070(6)(b) (mitigation of transportation impacts). Consistency generally refers to the GMA's requirement that

² RCW 36.70A.280(2).

³ RCW 36.70A.320(1).

⁴ RCW 36.70A.320(2).

⁵ RCW 36.70A.280, RCW 36.70A.302.

⁶ RCW 36.70A.290(1).

⁷ RCW 36.70A.320(3). In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

1 development regulations, capital budget, planning and other local government actions work
2 in concert with and implement the comprehensive plan policies. A hallmark of the GMA's
3 mandate to local jurisdictions is that all city activities must align, in substance, with its
4 comprehensive plan.

5 The GMA sections most germane to the analysis of this case are as follows:
6

7 *RCW 36.70A.130 Comprehensive plans ... Amendments.*

8 (1)(a) Each comprehensive land use plan and development regulations shall be subject to
9 continuing review and evaluation by the county or city that adopted them. Except as
10 otherwise provided, a county or city shall take legislative action to review and, if needed,
11 revise its comprehensive land use plan and development regulations to ensure the plan
12 and regulations comply with the requirements of this chapter according to the deadlines
in subsections (4) and (5) of this section.

13 ...
14 (d) Any amendment of or revision to a comprehensive land use plan shall conform to this
15 chapter. **Any amendment of or revision to development regulations shall be
consistent with and implement the comprehensive plan.**

16 (4) Except as provided in subsection (6) of this section, counties and cities shall take action
17 to review and, if needed, revise their comprehensive plans and development regulations
18 to ensure the plan and regulations comply with the requirements of this chapter as
19 follows:

20 (a) On or before December 1, 2004, for Clallam, Clark, Jefferson, King, Kitsap, Pierce,
21 Snohomish, Thurston, and Whatcom counties and the cities within those counties.

22 *RCW 36.70A.040 ... Development regulations must implement comprehensive plans.*

23 (3) Any county or city that is initially required to conform with all of the requirements of this
24 chapter under subsection (1) of this section shall take actions under this chapter as
follows:

25 ...
26 (d) if the county has a population of fifty thousand or more, the county and each city located
27 within the county shall adopt **a comprehensive plan under this chapter and
development regulations that are consistent with and implement the
28 comprehensive plan** on or before July 1, 1994 ...[Emphasis added.]

29 *WAC 365-196-030 – Applicability*

30 (2) Compliance with the procedural criteria is not a prerequisite for compliance with the act.
31 This chapter makes recommendations for meeting the requirements of the act, it does
32 not set a minimum list of actions or criteria that a county or city must take. Counties and

1 cities can achieve compliance with the goals and requirements of the act by adopting
2 other approaches.

- 3 (3) How the growth management hearings board use these guidelines. The growth
4 management hearings board must determine, in cases brought before them, whether
5 comprehensive plans or development regulations are in compliance with the goals and
6 requirements of the act. **When doing so, board must consider the procedural criteria
7 contained in this chapter, but determination of compliance must be based on the
8 act itself.** [Emphasis added.]

9 *WAC 365-196-805 - Timing of initial adoption.*

- 10 (1) Except for interim regulations, required development regulations must be enacted either
11 by the deadline for adoption of the comprehensive plan or within six months thereafter, if
12 an extension is obtained. The possibility of a time gap between the adoption of a
13 comprehensive plan and the adoption of development regulations pertains to the time
14 frame after the initial adoption of the comprehensive plan. Subsequent amendments to
15 the plan should not face any delay before being implemented by regulations. **After
16 adoption of the initial plan and development regulations, such regulations should
17 at all times be consistent with the comprehensive plan. Whenever amendments to
18 comprehensive plans are adopted, consistent implementing regulations or
19 amendments to existing regulations should be enacted and put into effect
20 concurrently.** See WAC 365-196-660. [Emphasis added.]

21 V. ANALYSIS AND DISCUSSION

22 Issue No. 1

23 Does the adoption of that portion of Ordinance 18C-08 (codified at MICC 19.15.230(I)) that
24 allows adoption of comprehensive plan amendments without concurrent development
25 regulations **for an indefinite period of time** violate sections of the GMA relating to
26 concurrency and consistency between the Comprehensive Plan and development
27 regulations?⁸

28 Discussion

29 A comprehensive plan lays out a series of goals, objectives and policies that are
30 intended to guide the decisions of elected officials and staff. Development regulations
31 implement the comprehensive plan through the standards or requirements set for the use of
32

⁸ Petitioner's statement of this issue, as it appears in the Prehearing Order, included references to a number of statutes and regulations. However, the Petitioner's brief includes only reference and argument addressed to RCW 36.70A.130(4) and to WAC 365-196-805. As Petitioner has not provided legal argument for any other statutory or regulatory sections asserted in Issue 1, as it appears in the Prehearing Order, those assertions are deemed abandoned and not discussed here.

1 land. The authors of the GMA use the words **concurrency** and **consistency** to emphasize
2 the necessity for compatibility and continuity between the plan and its implementation. At its
3 inception in the early 1990s, the GMA required cities to adopt a comprehensive plan and to
4 adopt development regulations that implemented that plan. As local governments adopted
5 their first comprehensive plans, the law provided for as much as six months delay in the
6 adoption of development regulations. RCW 36.70A.040(3), (4) and (5).
7

8 Since that time, subsequent amendments to the comprehensive plan and
9 development regulations have been scrutinized for substantive **consistency** between the
10 comprehensive plan and development regulations, as required by RCW 36.70A.130(1)(d)
11 and RCW 36.70A.040(3), (4) and (5).
12

13 The question presented here is whether an ordinance establishing a procedural
14 policy for the adoption of development regulations implementing current comprehensive
15 plan amendments “as soon as reasonably practicable”
16

17 (1) violates any requirement of immediately **concurrent** adoption of development
18 regulations implementing comprehensive code changes, or
19

20 (2) by its adoption, violates the expectation of **consistency** between the
21 comprehensive plan and development regulations.
22

23 **Statutory Violation**

24 In briefing Issue One, Petitioner references only RCW 36.70A.130(4), which provides
25 the initial deadline for the adoption of comprehensive plans and development regulations
26 under the GMA. King County and its cities largely complied with the 2004 deadlines.
27 Petitioner offers no legal argument for how the City’s procedural ordinance in question
28 would violate this section, but rather suggests that this section imposes a “continuing
29 affirmative duty on the part of the city to investigate, identify and remedy inconsistencies,
30 which would be pointless without concurrency at adoption.”⁹ While the Department of
31 Commerce guidelines strongly urge concurrent action, the Board cannot interpret RCW
32

⁹ Petitioner Coen’s Pre-hearing Brief, p. 18.

1 36.70A.130(4) so broadly. That section provides deadlines for initial adoption of
2 comprehensive plans and implementing regulations. Petitioner offers no legal theory by
3 which the Board could find the City in violation of this requirement 15 years later, especially
4 by adoption of a procedural ordinance.

5 The City cites the Board's order in *Bremerton v. Kitsap County*, CPSGMHB Case No.
6 04-3-0009c (Bremerton II), FDO, August 9, 2004, for the proposition that development
7 regulations need not be adopted at the same time as the comprehensive plan
8 amendments.¹⁰ The case represents the Board's most definitive statement on this issue, so
9 it would be useful to review its facts and findings.

11 Kitsap County had adopted new policies on rural lands in its comprehensive plan
12 amendments; Bremerton challenged the ordinance based on an assertion that Kitsap
13 County's failure to **concurrently** (at the same time) review and adopt **consistent**
14 development regulations created a violation of RCW 36.70A.040. The County defended its
15 actions with two separate arguments:

17 (1) There is nothing in the GMA barring the county from setting up a framework for
18 establishing future development regulations (**addressing concurrent adoption**), AND

19 (2) The zoning regulations then currently in effect substantially reflected the recently
20 amended comprehensive plan, except for the portion of the amendment that permitted
21 clustering incentives (**addressing consistency**).¹¹

23 In ruling on this issue, the Board states the law as:

25 The GMA requires a jurisdiction's development regulations to be consistent
26 with, and implement, its comprehensive Plan. See RCW 36.70A.040. The
27 essence of the City's argument on this issue is: since the County did not adopt
28 implementing regulations for the RWL policies at the same time as it adopted
29 the new RWL Plan policies, then the Plan and [existing] development
30 regulations must be inconsistent. While that may be true in some
31 circumstances, the Board concludes that it is not the case here.

32 ¹⁰ City of Mercer Island's Prehearing Brief, p. 18.

¹¹ *Bremerton* at 24-25.

1 First, the Act does not specifically mandate that Plans and development
2 regulations be adopted concurrently. However, as the Board has previously
3 indicated, concurrent adoption of Plan amendments and implementing
4 development regulations may be the wisest course of action to avoid
5 inconsistencies between the Plan and development regulations. See: *Jody L.*
6 *McVittie v. Snohomish County (McVittie V)*, CPSGMHB Case No. 00-3-0016,
7 Final Decision and Order, (Apr. 12, 2000), footnote, at 7. However, concurrent
8 adoption of development regulations may not be necessary if the existing
9 development regulations continue to implement the Plan as amended. This is
10 the situation posed here.¹²

11 In the *Bremerton* case, the Board found that, as to the question of **concurrency**, “the
12 Act does not specifically mandate that Plans and development regulations be adopted
13 concurrently,” noting however that a failure to concurrently adopt or amend development
14 regulations concurrent with plan changes could result in internal inconsistency. On those
15 facts, the Board found that the new plan policies and the existing regulations were **not**
16 **inconsistent**, and to the extent that other new policies were unsupported by existing
17 regulations, those policies could not be effective **until development regulations are**
18 **adopted for them**.¹³

19 While the *Bremerton* case affirms the City’s position that there is not a statutory
20 mandate for immediately **concurrent** adoption of consistent development regulations, it
21 deals separately with the question of whether **inconsistency** exists, based on those specific
22 facts. The City argues for a similar interpretation, leaving until a later time the issues raised
23 by assertions of inconsistency encountered in *Bremerton*:

24
25 Contrary to Petitioner’s claim, “as soon as reasonably practicable” is neither
26 indefinite nor purely discretionary. The code imposes a reasonable person
27 standard given the totality of the circumstances to determine whether the City
28 is adopting development regulations in a timely fashion.

29

30 By concluding that Kitsap County did not violate the GMA when it did not
31 concurrently adopt comprehensive plan amendments and development

32 ¹² *Bremerton* at 14.

¹³ *Id.*

1 regulations, the Board distinguished between concurrent adoption versus
2 consistency with the comprehensive plan. ... It is the later that determines
3 whether the GMA is violated – not the former as Petitioner here, like petitioner
4 in *Bremerton v. Kitsap County*, mistakenly claims.¹⁴

5 In the present case, this petition challenges an ordinance that adopted a procedural
6 policy. The ordinance had no impact on any section of the comprehensive plan or
7 development regulations. This petition did not allege *internal consistency* between
8 comprehensive plan policies and/or development regulations. Neither did the petitioner raise
9 a failure to act challenge based on the City's adoption of plan policies for which there are no
10 implementing development regulations.
11

12 Thus, we confirm the Board's statement in *Bremerton* that "the Act does not
13 specifically mandate that Plans and development regulations be adopted concurrently."¹⁵
14

15 **Regulatory Violation**

16 As noted above, WAC 365-196-805 addresses the need to ensure adoption of
17 consistent, implementing regulations whenever comprehensive plan amendments are
18 adopted.
19

20 After adoption of the initial plan and development regulations, such regulations
21 should at all times be consistent with the comprehensive plan. Whenever
22 amendments to comprehensive plans are adopted, *consistent implementing*
23 *regulations or amendments to existing regulations should be enacted and put*
24 *into effect concurrently.* [Emphasis added.]

25 This chapter of the Washington Administrative Code is titled Growth Management Act
26 – Procedural Criteria for Adopting Comprehensive Plans and Development Regulations.
27 Part One includes a section on application, WAC 365-196-030, making clear that
28 compliance with these procedural criteria "is not a prerequisite for compliance with the act"
29 and offering this Board direction on how to use the guidelines:
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32 ¹⁴ City of Mercer Island's Prehearing Brief, pp. 5, 9.

¹⁵ *Bremerton* at 14.

1 This chapter makes recommendations for meeting the requirements of the act,
2 it does not set a minimum list of actions or criteria that a county or city must
3 take. Counties and cities can achieve compliance with the goals and
4 requirements of the act by adopting other approaches. WAC 365-196-030(2)

5 (3) How the growth management hearings board use these guidelines. The
6 growth management hearings board must determine, in cases brought before
7 them, whether comprehensive plans or development regulations are in
8 compliance with the goals and requirements of the act. *When doing so, board*
9 *must consider the procedural criteria contained in this chapter, but*
10 *determination of compliance must be based on the act itself.* [Emphasis
11 added.]

12 Although the Board shares Petitioner's concerns that the City's new code provision
13 may appear to condone a future failure to ensure that plan policies are implemented by
14 consistent development regulations, the Board must conclude that the Petitioner has failed
15 to prove that the ordinance itself has resulted in a current failure to comply with a
16 requirement of GMA..
17

18 **Implication of the Court of Appeals Cases**

19 Petitioner's brief closely describes *Kittitas County v. Kittitas County Conservation*
20 *Coalition*, 176 Wn. App. 38, (2013) and its antecedent GMHB cases, *Kittitas County*
21 *Conservation v. Kittitas County (Kittitas I)*, GMHB No. 06-1-0011 (2007) and *Kittitas County*
22 *Conservation v. Kittitas County (Kittitas II)*, 07-1-0004c (2007), in support of the assertion
23 that development regulations must be adopted immediately concurrent with the comp plan
24 changes.¹⁶
25

26 WAC 365-196-805(1) in its official language states that when a county later amends
27 its comprehensive plan, "consistent implementing regulations or amendments to existing
28 regulations **should** be enacted and put into effect concurrently." Petitioner quotes the Court
29 of Appeals in *Kittitas* as effectively changing that language:
30
31

32 ¹⁶ Petitioner Coen's Prehearing Brief, pp. 19-24.

1 If a county later amends its comprehensive plan, it **must** concurrently adopt or
2 amend consistent implementing development regulations. WAC 365-196-
3 805(1).¹⁷

4 The cases cited in which the Court of Appeals used this language are distinguishable
5 from the instant case on several grounds. Further, while concurrency was specifically
6 mentioned in both the Board order and in the later appellate case, as noted, it was in
7 conjunction with a recitation of the GMA requirement of consistency.¹⁸ The issue of exactly
8 when consistent development regulations would, should, or must be adopted was not
9 central to the issues or to the holdings in any of these cases.

10 The same Court of Appeals used the identical language in a case written by the
11 same judge a month later, in an almost identical recitation of GMA requirements.¹⁹

12 The Petitioner emphasized at the Hearing on the Merits ²⁰ that the Court of Appeals
13 use of the word **must** in the cited cases has changed the meaning of the word **should**, as it
14 appears in the official language of the regulation.²¹ We cannot change the official language
15 of an existing regulation on this argument. And, even were we inclined to do so, we have
16 already concluded that the WAC regulation advising on procedure, without a specific
17 statutory reference to a goal or requirement of the GMA is insufficient to create a duty.

18 In summary, the Petitioner's brief provides no legal argument indicating how the
19 challenged ordinance violates any specific section of the statute. Thus the Board must
20 conclude that the Petitioner has not met the burden of proof required in RCW 36.70A.320,
21 *to wit*, "the burden is on the petitioner to demonstrate that any action taken by a state
22 agency, county, or city under this chapter is not in compliance with the requirements of this
23 chapter."

24 **The Board finds and concludes** that the Petitioner has not met its burden of proof
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29 ¹⁷ *Kittitas* at 49.

30 ¹⁸ *Kittitas* 176 Wn. App. at 49; *Kittitas I*, at 2, 29, 30, 31; *Kittitas II*, at 16-17, 20, 49-52, 66 and 81, as set out in
31 Petitioner Coen's Prehearing Brief, pp.19-22.

32 ¹⁹ Petitioner Coen's Prehearing Brief, p. 23, citing *Spokane County v. EWGMHB*, 176 Wn. App. 555, (2013).

²⁰ March 20, 2019.

²¹ Petitioner Coen's Prehearing Brief, pp. 22-23.

1 that the City's adoption of a process for approval of development regulations implementing
2 amendments to the comprehensive plan "as soon as reasonably practicable" violates the
3 goals and requirements of the GMA.
4

5 **Issue No. 2**

6 Does the failure to provide public notice and hold a public hearing in violation of MICC
7 19.15.260 for that portion of Ordinance 18C-08 codified at MICC 19.15.230(G) and (I), along
8 with posting public information that concurrent development regulations were not required,
9 violate the following provisions of the Growth Management Act relating to public notice,
10 participation and a public hearing?

11 The only GMA section cited in the Petitioner's brief is RCW 36.70A.020(11), a goal of
12 the GMA regarding public participation. Petitioner has not provided legal argument for any
13 other violation asserted in Issue 2, as it appears in the Prehearing Order, and those
14 assertions are deemed abandoned and are dismissed.

15 In support of violation of the goal, Petitioner recites the prior argument that "[w]ithout
16 concurrent development regulations at the time comprehensive plan amendments are
17 adopted there can be no meaningful participation,"²² but has not carried his burden to show
18 that the absence of development regulations violates a GMA requirement embodied in RCW
19 36.70A.020, .035 or .140.
20

21 **The Board finds and concludes** that the Petitioner has not met its burden of proof
22 that Ordinance 18C-08 violates the goals and requirements of the GMA as to public notice
23 or hearing.
24

25 **VI. ORDER**

26 Based upon review of the petition, the briefs and exhibits submitted by the parties,
27 the GMA, prior Board orders and case law, having considered the arguments of the parties,
28 and having deliberated on the matter:
29

30 **The Board finds and concludes** that the Petitioner has not met its burden of proof
31

32 ²² Petitioner Coen's Prehearing Brief, p. 24.

1 that the City's adoption of Ordinance 18C-08, a process for approval of development
2 regulations implementing amendments to the comprehensive plan "as soon as reasonably
3 practicable", violates the goals and requirements of the GMA.

4 **The Board finds and concludes** that the Petitioner has not met its burden of proof
5 that Ordinance 18C-08 violates the goals and requirements of the GMA as to public notice
6 or hearing.
7

8 SO ORDERED this 10th day of May 2019.
9

10
11 _____
12 Deb Eddy, Board Member
13

14 _____
15 Bill Hinkle, Board Member
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17 _____
18 Cheryl Pflug, Board Member
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20 **Note: This is a final decision and order of the Growth Management Hearings Board**
21 **issued pursuant to RCW 36.70A.300. A motion for reconsideration must be filed with**
22 **the Board and served on all parties within ten days of mailing of the final order. WAC**
23 **242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board**
24 **may appeal the decision to Superior Court within thirty days as provided in RCW**
25 **34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970.**
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Appendix A: Procedural matters

On November 15, 2018, Mark Coen (Petitioner) filed a petition for review, which was assigned Case No. 18-3-0010.

The presiding officer held a prehearing Conference telephonically on December 10, 2018. On December 31, 2018, the Petitioner filed a Motion to Supplement the Record, and that motion was granted. On February 26, 2019, Petitioner filed a Second Motion to Supplement the Record. That motion was granted.

The Briefs and exhibits of the parties filed as follows:

- Petitioner's Prehearing Brief filed on February 14, 2019.
- City of Mercer Island's Response Brief filed on March 6, 2019.
- Petitioner's Reply Brief filed on March 12, 2019.

Hearing on the Merits

The board panel convened a hearing on the merits on March 20, 2019. The hearing afforded each party the opportunity to emphasize the most important facts and arguments relevant to its case. Board members asked questions to understand the history of the ordinances, the facts in the case, and the legal arguments of the parties.

Appendix B: Legal Issues

Per the Prehearing Order, legal Issues in this case were as follows:

1. Does the Council's adoption of that portion of Ordinance 18C-08 later codified at MICC 19.15.230(G) and (I) that allows adoption of comprehensive plan amendments without concurrent development regulations for an indefinite period of time violate the following provisions of the Growth Management Act relating to concurrency and consistency between the Comprehensive Plan and development regulations:
 - a. RCW 36.70A.040(3) that requires the city to adopt a comprehensive plan and development regulations that are consistent.
 - b. RCW 36.70A.130(1)(a) that requires revisions to the comprehensive plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter including consistency and concurrency.
 - c. RCW 36.70A.130(1)(d) that requires that any amendment of or revision to a comprehensive land use plan shall conform to the Growth Management Act, and any development regulation shall be consistent with and implement the comprehensive plan.
 - d. RCW 36.70A.130(4) that requires cities within King County to take action to review and if needed revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter including concurrency and consistency.
 - e. WAC 365-196-010(1)(e) that requires that development regulations adopted to implement the comprehensive plan be consistent with such plans.
 - f. WAC 365-196-060(2)(d) that requires development regulations must be consistent with the goals and requirements of the Act and the comprehensive plan.
 - g. WAC 365-196-210(8) that defines consistency as to mean no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

- 1 h. WAC 365-196-500(3) that requires that development regulations must be
2 internally consistent and be consistent with and implement the
3 comprehensive plan.
- 4 i. WAC 365-196-500(4) that requires that each comprehensive plan should
5 require mechanisms for ongoing review of its implementation and
6 adjustment of its terms whenever internal conflict become apparent. At a
7 minimum, any amendment to the comprehensive plan or development
8 regulations must be reviewed for consistency. The review and update
9 processes required in RCW 36.70A.130(1) and (3) should include a review
10 of the comprehensive plan and development regulations for consistency.
- 11 j. WAC 365-196-610 that requires periodic review and update of
12 comprehensive plan amendments and development regulations.
13 Comprehensive plans and development regulations are subject to periodic
14 update on the schedule established in RCW 36.70A.130(5) and requires that
15 cities must review and if needed revise their comprehensive plans and
16 development regulations for compliance with the act.
- 17 k. WAC 365-196-640 that provides for comprehensive plan amendment
18 procedures and requires the comprehensive plan is internally consistent and
19 consistent with the comprehensive plans of adjacent counties and cities as
20 well as the city's own development regulations that implement the
21 comprehensive plan.
- 22 l. WAC 365-196-800(1) that requires development regulations must be
23 consistent with and implement comprehensive plans adopted pursuant to the
24 act.
- 25 m. WAC 365-196-805 that requires that development regulations must be
26 drafted and adopted concurrently with comprehensive plan amendments.
- 27 2. Does the failure to provide public notice and hold a public hearing in violation of
28 MICC 19.15.260 for that portion of Ordinance 18C-08 codified at MICC
29 19.15.230(G) and (I), along with posting public information that concurrent
30 development regulations were not required, violate the following provisions of
31 the Growth Management Act relating to public notice, participation and a public
32 hearing?
- a. RCW 36.70A 020(11) that requires citizen participation and encourages
involvement of citizens in the planning process.

- 1 b. RCW 36.70A.035(1) and (2)(a) that require public participation, notice
2 procedures that are reasonably calculated to provide notice to affected and
3 interested individuals, and provides that if the legislative body for a city
4 chooses to consider a change to an amendment to a comprehensive plan or
5 development regulation, and the change is proposed after the opportunity for
6 review and comment has passed under the city's procedures, an opportunity
7 for review and comment on the proposed changes shall be provided before
8 the local legislative body votes on the proposed change.
- 9 c. RCW 36.70A.140 that requires the city to establish a public participation
10 program identifying procedures for early and continuous participation in the
11 amendment of development regulations, including opportunity for written
12 comments, effective notice, and public meetings.
- 13 d. WAC 365-196-600 that sets forth the requirements for public participation.
14 The procedures must provide for broad dissemination of proposals and
15 alternatives, opportunity for written comments, public meetings after effective
16 notice, provision for open discussion, communication programs, information
17 systems and consideration of and response to public comments in the
18 development and amendment of comprehensive plan and development
19 regulations.
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